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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**DEBORAH DONOGHUE,
MARK RUBENSTEIN and
CALENTURE, LLC, a New
York Limited Liability Company,**

Plaintiffs,

- Against -

**SINCLAIR BROADCAST
GROUP INC.,**

Nominal Defendant, and

DAVID D. SMITH,

Defendant.

Case No. 21 -CV -4811

**COMPLAINT FOR RECOVERY
OF SHORT-SWING PROFITS
UNDER 15 U.S.C. SEC. 78p(b)
[SECTION 16(b) OF THE
SECURITIES EXCHANGE ACT
OF 1934, AS AMENDED]**

Jury Trial Demanded

THE PLAINTIFFS, by their attorneys above named, complaining of the
defendants respectfully allege the following upon information and belief except as to
paragraph 2 which plaintiffs allege on personal knowledge:

JURISDICTION:

1. This action arises under the provisions of Section 16(b) of the Securities Exchange Act of 1934, as amended (the "ACT"), 15 U.S.C. Section 78p(b), and jurisdiction is conferred upon this court by Section 27 of the ACT, 15 U.S.C. § 78aa.

THE PARTIES AND VENUE:

2. Plaintiffs are security owners of SINCLAIR BROADCAST GROUP INC. (SINCLAIR), a Maryland corporation.

3. At all times relevant the Class A common stock of SINCLAIR was registered under Section 12(b) of the ACT and was and is traded on The NASDAQ Stock Market LLC, a National Securities Exchange located within this district. One or more of the transactions forming the trading pleaded herein was or were conducted on The NASDAQ Stock Market LLC.

4. This action is brought in the right and for the benefit of SINCLAIR which is named as a nominal party defendant solely in order to have all necessary parties before the court.

5. SINCLAIR has principal offices at 10706 Beaver Dam Road, Hunt Valley, MD 21030.

6. DAVID D. SMITH (SMITH), at all times relevant, was and is an officer, director and more-than-10% beneficial owner of SINCLAIR and thereby a so-

called “insider” of SINCLAIR as that term is understood under Section 16(b) of the ACT.

7. SMITH has an office and may be found at 10706 Beaver Dam Road, Hunt Valley, MD 21030.

STATUTORY REQUISITES:

8. The violations of Section 16(b) of the ACT to be described herein involve non-exempt securities in non-exempt transactions engaged in by a non-exempt person within the meaning of the ACT.

9. Demands for prosecution were made on SINCLAIR on March 29, 2021, on behalf of Plaintiff Deborah Donoghue and on April 1, 2021, on behalf of Mark Rubenstein and of Calenture, LLC. More than 60 days have expired since the first of the demands. By letter dated May 26, 2021, addressed to David Lopez, Esq., one of plaintiffs’ counsel, Bruce A. Ericson, counsel to SINCLAIR stated that SINCLAIR would “not ... assert Section 16(b) claims against Mr. Smith”. Further delay by the Plaintiffs in the initiation of suit would be a futile gesture.

10. This action is brought within two years of the occurrence of the violations to be described herein or within two years of the time when reports required by 15 U.S.C 78p(a) setting forth the substance of the transactions here complained of were first filed with the Securities & Exchange Commission.

FIRST CLAIM FOR RELIEF:

11. All that has been pled before is realleged.

The Purchases:

12. On or about November 20, 2020, SMITH acquired 3,255,000 shares of the Class B common stock of SINCLAIR in an act of self-dealing through a “substitut[ion] of the corpus of a trust [believed to be a GRAT] f/b/o [his]child”. SMITH Form 4 dated 11/24/20, fn. 1; Bruce A. Ericson’s Letter to David Lopez dated May 26, 2021. Plaintiffs believe this to mean that SMITH was the annuity beneficiary of the GRAT with his child the contingent and/or the residual beneficiary prior to the “substitution”. Discovery will establish the precise terms of the trust.

13. On or about December 23, 2020, SMITH acquired 1,500,000 shares of the Class B common stock of SINCLAIR through an act of self-dealing through “substitute[ion] of the corpus of a trust f/b/o [his] child”. SMITH Form 4 dated 12/28/20, fn. 1.

14. The Class B common stock of SINCLAIR was and is convertible at the holder’s election into Class A common stock on a one-for-one basis and has no expiration date. The Class B common stock was thus, *inter alia*, a derivative security with respect to SINCLAIR’s Class A common stock and its acquisition is deemed to have been a simultaneous acquisition of an equal quantity of Class A common stock for purposes of Section 16(b) of the ACT.

15. The consideration given in exchanges for the corpus of each trust was equal to the fair market value of the acquired shares which on November 20, 2020, was in the range of \$25.18 to \$27.12 per share and on December 23, 2020, was in the

range of \$28.25 to \$31.69 per share. Discovery will establish precise values paid at the time of each purchase.

16. In acquiring the SINCLAIR Class B (convertible into Class A) shares SMITH effected a change in the allocation of pecuniary interests in those shares to his benefit. Whereas prior to the acquisition the risks and benefits of ownership by the trust accrued to the trust's current and contingent beneficiaries including SMITH's son, upon SMITH's acquisition those risks and benefits became exclusively SMITH's. Discovery will determine the precise allocation of pecuniary interests amongst the beneficiaries before and after the acquisition.

17. By reason of the payment of fair market value for the shares, the change in pecuniary interests effected by the transfer of their ownership, the volitional nature of the transaction and SMITH's access to SINCLAIR insider information, the acquisition of 3,255,000 and 1,500,000 SINCLAIR Class B (convertible into Class A) shares by SMITH on November 20, 2020, and December 23, 2020, respectively were purchases of those shares by him for purposes of Section 16(b) of the ACT.

The Sales:

18. On February 19, 2021, SMITH paid a tax liability using 85,116 shares of SINCLAIR Class A common stock at a value of \$32.755 per share. Discovery determine whether the shares were delivered to SINCLAIR in satisfaction of withholding (which might be an exempt transaction) or whether they were sold into the open market or otherwise disposed of as garden variety cash sales.

19. On February 24, 2021, SMITH paid a tax liability using 102,766 shares of SINCLAIR Class A common stock at a value of \$35.295 per share. Discovery determine whether the shares were delivered to SINCLAIR in satisfaction of withholding (which might be an exempt transaction) or whether they were sold into the open market or otherwise disposed of as garden variety cash sales.

20. On February 26, 2021, SMITH paid a tax liability using 18,113 shares of SINCLAIR Class A common stock at a value of \$32.22. Discovery will need to determine whether the shares were delivered to SINCLAIR in satisfaction of withholding (which might be an exempt transaction) or whether they were sold into the open market or otherwise disposed of in garden variety cash sales.

21. On March 17, 2021, SMITH disposed of 1,164,890 shares of SINCLAIR Class A common stock at a value of \$37.95 to exercise stock appreciation rights. Discovery will determine whether the shares were delivered to SINCLAIR in a “cashless exercise” (which might be an exempt transaction) or whether they were sold into the open market or otherwise disposed of in garden variety cash sales.

22. On March 17, 2021, SMITH paid a tax liability using 477,488 shares of SINCLAIR Class A common stock at a value of \$37.15. Discovery will determine whether the shares were delivered to SINCLAIR in satisfaction of withholding (which might be an exempt transaction) or whether they were sold into the open market or otherwise disposed of in garden variety cash sales.

23. On March 19, 2021, SMITH made open-market sales of 252,676 shares of SINCLAIR Class A common stock at prices between \$34.22 and \$35.105 per

share. Discovery will determine the correctness of this claim, how many shares were sold at what prices on that day and what associated transaction costs might be.

24. On March 22, 2021, SMITH made open-market sales of 258,424 shares of SINCLAIR Class A common stock at prices between \$33.5514 and \$34.28 per share. Discovery will need determine the correctness of this claim, how many shares were sold at what prices on that day and what associated transaction costs might be.

25. On March 22, 2021, SMITH made open-market sales of 74,387 shares of SINCLAIR Class A common stock at prices between \$33.95 and \$34.32 per share. Discovery will determine the correctness of this claim and what associated transaction costs might be.

26. Short-swing profits were realized by SMITH as a result of the purchases and these sales within periods of less than six months as described in paragraphs 12 through 25, *supra*. Their precise amount is unknown to Plaintiffs pending discovery, but they are estimated to exceed \$5,000,000.

SECOND CLAIM FOR RELIEF:

27. All that has been pled before is realleged.

28. This Second Claim for Relief is a precaution against possible errors of detail attributable to inaccuracies in the public record or the discovery of additional trades during the course of this action.

29. SMITH, at times not barred by the statute of limitations measured from the date of the filing of this complaint, purchased and sold or sold and purchased equity securities or equity security equivalents of SINCLAIR within periods of less than six months of each other while an officer, a director and a beneficial owner of more than 10% of a class of equity securities of SINCLAIR, including but not limited to the transactions pleaded in the First Claim For Relief.

30. By reason of such purchases and sales or sales and purchases of its equity securities or equity security equivalents within periods of less than six months of one another while an insider of SINCLAIR, SMITH realized profits, the exact amounts thereof being unknown to Plaintiffs, which profits inure to the benefit, and are recoverable by Plaintiffs on behalf, of SINCLAIR.

WHEREFORE, Plaintiffs demand judgment:

a) Requiring SMITH to account for and to pay over to SINCLAIR the short-swing profits realized and retained by him in violation of Section 16(b) of the Act, together with appropriate interest and the costs of this suit;

b) Awarding to Plaintiffs their costs and disbursements including fair and reasonable attorneys', accountants and expert witness fees; and

c) Granting to Plaintiffs such other and further relief as the court may deem just and proper.

Dated: Southampton, New York
May 29, 2021

/s/ Miriam Tauber
Miriam Tauber, Esq.

/s/ James A. Hunter
James A. Hunter, Esq.

Yours, etc.

David Lopez
David Lopez, Esq.